FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

IN REPLY REFER TO:
1800B3-DEB

October 10, 1996

Schilling Distributing Company, Inc
Radio Station KFTE(FM)
202-A Gilbert Road
Lafayette, LA 70506

In re: KFTE(FM), Breaux Bridge, LA
Schilling Distributing Co., Inc.
BPH-960214IC

Dear Applicant:

This letter is in reference to the above-captioned application to increase the facilities of KFTE(FM) from Channel 243C3 to Channel 243C2 via the one-step upgrade-by-application process. The site change proposed in the application is expected to alleviate intermodulation interference created within some receivers near the present KFTE transmitter site in downtown Youngsville, LA. The intermodulation interference is said to be caused by the mixing of KFTE's strong signal with that of collocated station KMDL, Kaplan, LA, which operates four channels above KFTE's channel.

Applications to upgrade via the one-step application process are required to specify a set of allotment reference coordinates which comply with the minimum separation requirements of 47 CFR § 73.207 of the Commission's rules. *See FM Channel and Class Modifications by Application* in MM Docket 91-159, 8 FCC Rcd 4735, 58 Fed. Reg. 38534 (1993). For the proposed Class C2 allotment site, KFTE has selected coordinates at 30° 08' 14" NL, 92° 10' 20" WL, which meet this requirement. A Class C2 allotment reference site must also cover 100% of the community of license, assuming reference facilities of 50 kW effective radiated power (ERP) and 150 meters antenna height above average terrain (HAAT), and using the standard contour prediction method in 47 CFR § 73.313. 8 FCC Rcd at 4736, Footnote 7. In the present application, the 70 dBu contour will not cover all of the community of license. KFTE's calculations show that the 70 dBu contour will cover only 94.2% of Breaux Bridge. Thus, the allotment reference site will not meet the requirements of 47 CFR Section 73.315(a). KFTE cannot specify coordinates any closer to Breaux Bridge because any closer site would not meet the minimum spacing requirements of 47 CFR § 73.207 with respect to first-adjacent channel station KFTY, Morgan City, LA and second-adjacent channel station KZMZ, Alexandria, LA.

KFTE states that the standard contour prediction method does "not accurately represent the propagation characteristics in south Louisiana." In support of this statement, KFTE provides alternate analyses as a supplement to the standard contour prediction results. Because of very flat terrain, KFTE uses the terrain roughness factor with the standard contour prediction method to predict that the 70 dBu contour will

encompass all of Breaux Bridge.[1] KFTE also obtains the same result using the "Terrain Integrated Rough Earth Model (TIREM)." Further, KFTE refers to the present policy of granting construction permit applications, for which an increase in station class is not sought, if the coverage within the community of license by the 70 dBu contour is at least 80% of the area or 80% of the population within the legal boundaries of the community (deemed "substantial compliance" with § 73.315(a)). KFTE has offered to perform any field strength measurements required by the Commission to demonstrate 70 dBu coverage after implementation, and has indicated that it would dismantle the new facility should the field measurements not satisfy Commission requirements. Accordingly, KFTE requests that waiver of § 73.315(a) be granted.[2]

We do not find that waiver of § 73.315(a) is warranted. We have confirmed with the Commission's Allocations Branch that supplemental terrain analyses have not been accepted for establishing 100% city grade coverage from an allotment site in any case where the 70 dBu contour as predicted by the supplemental method (including terrain roughness) was extended beyond the location predicted by the standard contour prediction method in § 73.313. Our review of past allotment proceedings reveals only three allotment cases in which a supplemental showing was addressed in this context – *Woodstock & Broadway, Virginia*, 3 FCC Rcd 6398 (1988); *Creswell Oregon*, 4 FCC Rcd 7040 (1989); *Sonora, California*, 6 FCC Rcd 6042 (1991). None of these cases support the use of supplemental contour prediction methods for extending the community coverage contour beyond the location predicted by the standard contour prediction method from an allotment site. *Woodstock* merely stated that an applicant which desires to upgrade a station at a particular site may employ the standard contour prediction method in 47 CFR § 73.313 to show the effects of actual terrain in the direction of the community of license on the proposed 70 dBu contour, as opposed to consideration only of reference facilities for the station class and a circular 70 dBu contour.[3] *Creswell* and *Sonora* both dealt with situations in which city coverage as predicted by the standard contour prediction method was in question due to an intervening terrain obstruction, wherein the use of a supplemental method (Technical Note 101) was considered to ascertain the effect of the obstruction upon actual coverage. Consequently, we find that our previous determinations clearly indicate that supplemental showings are not to be used for calculating city coverage from the allotment reference site.

Turning from rulemaking proceedings to the one-step upgrade-by-application procedures, we note that the process adopted by the Commission did not alter the rulemaking requirements for the allotment portion of the application. That is, the allocation site must be fully spaced with respect to all other stations, allotments, and prior-filed applications. In addition, the reference facilities for the station class (for Class C2, 50 kW ERP and 150 meters HAAT) must cover 100% of the community of license, using the standard contour prediction method. *See FM Channel and Class Modifications by Application*, 8 FCC Rcd at 4736, Footnote 7. One-step applications which cannot demonstrate that a suitable allotment site exists which would satisfy these criteria are

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[1] In 1977, the Commission stayed use of the terrain roughness factor for the prediction of contours. *See Temporary Suspension of Certain Portions of Sections 73.313, 73.333, 73.684 and 73.699*, 40 RR 2d 965, 42 Fed. Reg. 25736 (1977).

[2] KFTE provides additional support for its application and waiver request by noting that the population served by KFTE operating as proposed would increase to 465,072, an increase of 34%.

[3] *Woodstock* permitted consideration of the specific HAATs along the radials between the allotment site and the community of license in conjunction with the F(50,50) curves to predict the location of the 70 dBu contour. For a one-step upgrade application, an analysis of this type would only be acceptable if the allotment-reference coordinates and application site were the same, which is not the case in this application.

dismissed. *Id.* at 4737 (paragraph 14). This policy is strictly enforced even where the applicant intends to utilize the more relaxed spacing and contour protection procedures of § 73.215 for the actual facility. In sum, KFTE's use of the 80% city coverage policy for applications, as well as supplemental showings, have no precedent in either an allotment or one-step application context.

The allotment requirements are not merely a "procedural key" which can be discarded at the application stage but the foundation mechanism which the Commission uses to protect the integrity of FM station licenses. The Commission has generally held that to justify waiver to create a sub-standard allotment, the showing must be compelling.[4] In these circumstances we decline to depart from our strict enforcement policy. Moreover, we note that KFTE's proposed waiver would have far-reaching impact on our licensing and allocation policies. As a result, KFTE's proposal would be best considered in the context of a formal rulemaking proceeding addressing the use of supplemental showings.

The fact that the proposed transmitter site move would reduce front-end overload interference in some receivers does not justify waiver in this instance. While some receivers may be adversely affected by the strong KFTE and KMDL signals, the fault lies in the receiver, not the location of the two stations.[5] Nor is fourth-adjacent channel interference considered in either an allotment proceeding or a construction permit application. Moreover, a change in station class is not necessary to resolve the interference. It which can be remedied by moving either KFTE or KMDL to a new transmitter site.

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, Inc. v. FCC*, 406 F.d 644,666 (D.C. Cir. 1968) (per Curiam)). We have afforded TBC's waiver requests the "hard look" called for under *WAIT Radio v. FCC*, 418 F2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in the justifications are insufficient to waive §§ 73.203 and 73.3573.

Accordingly, KFTE's request for waiver of § 73.315(a) IS DENIED. Pursuant to the procedures set forth in *Processing Procedures for Commercial FM Broadcast Applications*, 7 FCC Rcd 5074, 57 Fed. Reg. 34872 (1992) at Paragraph 22, corrective amendments may not be considered for applications in which a waiver request has been denied by the staff. Therefore, application BPH-960214IC IS HEREBY DISMISSED. This action is taken pursuant to 47 CFR § 0.283.

Sincerely,

Dennis Williams

Dennis Williams
Assistant Chief
Audio Services Division
Mass Media Bureau

cc: C.F. Ellis Engineering

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[4] *See Bristol, Tennessee*, 46 RR 2d 650 (1979) (request to create a short-spaced substandard allotment denied).

[5] The Commission does not specify receiver standards for any service.